

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

FRANK PISCIOTTI,

Plaintiff,

v.

ROBERTA BRITTINGHAM,

Defendant.

CASE NO. 20-CV-05924-LK

ORDER GRANTING IN PART  
PLAINTIFF'S MOTION TO  
CONTINUE TRIAL AND  
PRETRIAL DEADLINES

This matter comes before the Court on Plaintiff Frank Piscioti's Motion to Continue the Trial Date and Pretrial Deadlines, Defendant Roberta Brittingham's Opposition, and the parties' supporting declarations. Dkt. Nos. 55–56, 57–58. The Court GRANTS IN PART Piscioti's motion.

**I. INTRODUCTION**

Trial in this matter is currently scheduled for June 14, 2022. Dkt. No. 41 at 2. The parties' motions in limine are due on May 2, 2022, their pretrial order is due on May 16, 2022, and their trial briefs are due on May 23, 2022. *Id.* at 1–2. And last, the pretrial conference is scheduled for May 27, 2022. *Id.* at 2.

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Pisciotti moves the Court for a three-month extension of these deadlines because his lead counsel is also lead counsel in another case currently pending in this district, *Aquarian Foundation, Inc. v. Lowndes*, No. 2:19-CV-01879-RSM. Dkt. No. 55 at 1–2. According to Pisciotti, *Aquarian* was set for trial on April 25, 2022 until recently, when Chief Judge Martinez “unexpectedly” pushed trial to May 23, 2022 during the pretrial conference. *Id.* at 2. The *Aquarian* pretrial deadlines and trial date now directly conflict with or overlap the Court’s pretrial deadlines in this matter. *Id.* at 3–4 (table depicting overlapping schedule); Dkt. No. 57 at 3 (same). As for direct conflicts, the parties’ trial briefs, proposed voir dire questions, proposed jury instructions, deposition designations, and exhibit list are due on the first day of the *Aquarian* trial. Dkt. No. 55 at 4; Dkt. No. 57 at 3. And the pretrial conference in this case is set for the final day of the *Aquarian* trial. Dkt. No. 55 at 4; Dkt. No. 57 at 3. The two schedules otherwise overlap for the entire month of May. *See* Dkt. No. 57 at 3.

## II. DISCUSSION

The Court may modify a schedule “only for good cause[.]” Fed. R. Civ. P. 16(b)(4). This standard “primarily considers the diligence of the party seeking the amendment.” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). As the Ninth Circuit warns, carelessness is incompatible with a finding of diligence. *Id.* The Court’s inquiry thus focuses on the moving party’s reasons for seeking a modification and, “[i]f that party was not diligent, the inquiry should end.” *Id.*

Plaintiff emphasizes that his counsel is “a single-attorney law firm with one part-time paralegal who works remotely.” Dkt. No. 55 at 4. Although counsel was prepared for successive trials, the shift in the *Aquarian* schedule will force counsel to prepare for two trials at once and then continue to meet pretrial deadlines in this case amidst trying *Aquarian*. *Id.* at 4–5. As counsel notes, this would be “unreasonable, if not impossible.” *Id.* at 4–5.

Brittingham opposes continuance. She counters that “there is no actual conflict with this case”—only “some overlap”—and insists that both cases can therefore “be tried without requiring [Pisciotti’s counsel] to be in two places at once.” Dkt. No. 57 at 3. In Brittingham’s view, “[p]roper planning and scheduling can ensure that work is completed in advance to avoid any overlapping deadline.” *Id.* The Court finds this disingenuous. In these circumstances, it is unreasonable to expect a single-attorney law firm with one part-time paralegal to “plan and schedule” for the following changes that were put into effect only last week:

Old deadlines	New deadlines
March 28: Motions in limine (Aquarian)	May 2: Motions in limine (Pisciotti)
April 11: Pretrial order (Aquarian)	May 11: Pretrial order (Aquarian)
April 18: Trial briefs (Aquarian)	May 16: Pretrial order (Pisciotti)
April 25: Trial (Aquarian)	May 18: Proposed FOF/COL (Aquarian)
May 2: Motions in limine (Pisciotti)	May 18: Trial briefs (Aquarian)
May 16: Pretrial order (Pisciotti)	May 23: Voir dire etc. (Pisciotti)
May 23: Voir dire etc. (Pisciotti)	May 23-27: Trial (Aquarian)
May 27: Pretrial conference (Pisciotti)	May 27: Pretrial conference (Pisciotti)
June 14-20: Trial (Pisciotti)	June 14-20: Trial (Pisciotti)

*Cf. Ball v. Manalto, Inc.*, No. C16-1523RSM, 2017 WL 2119329, at \*2 (W.D. Wash. May 16, 2017) (“While pregnancy would almost certainly constitute good cause for a four month continuance if Defendants were represented by a solo practitioner, the Court finds that it does not constitute good cause when Defendants are represented by at least one other named counsel and a firm full of associates that can certainly be brought up to speed on this case.”). Indeed, Brittingham filed an unopposed motion to reschedule the pretrial conference in this case because her counsel would be in trial in another matter on the date of the pretrial conference, Dkt No. 40 at 1, but now inexplicably declines to extend the same courtesy to Pisciotti. *See* Dkt. No. 55 at 3 and table above (counsel for Pisciotti scheduled to be in trial in *Aquarian* on the pretrial conference date in this case).



1 Dated this 15th day of April, 2022.

2 

3 Lauren King  
4 United States District Judge